



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0002; FRL-10024-54-Region 8]

Approval and Promulgation of Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval on a revision to the North Dakota State Implementation Plan (SIP) submitted by the State of North Dakota on November 11, 2016 and supplemented on March 15, 2021, that addresses amendments to the regional haze provisions of the North Dakota Administrative Code (NDAC). These revisions were submitted to remove certain regional haze requirements related to Best Available Retrofit Technology (BART) in the first planning period. EPA is also finalizing approval on a revision to the North Dakota SIP submitted on August 3, 2020, that addresses additional amendments to the regional haze provisions of the NDAC. The 2020 SIP revision was submitted to update the incorporation by reference date for regional haze definitions, add emission reduction requirements to make reasonable progress during the second and subsequent regional haze planning periods, and revise the regional haze monitoring, recordkeeping, and reporting requirements to be applicable under the second and subsequent planning period. EPA is taking this action pursuant to section 110 and Part C of the Clean Air Act (CAA).

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0002. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or

other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our April 1, 2021 proposal (86 FR 17101). In that document we proposed to approve North Dakota’s regional haze SIP revision submitted by the State of North Dakota on November 11, 2016 and supplemented on March 15, 2021. Specifically, we proposed to approve North Dakota’s removal of NDAC section 33-15-25-02.1 (requirement pertaining to the submittal of a regional haze BART analysis) and section 33-15-25-03 (requirement that references the federal guidelines for BART determinations under the regional haze rule) from the regional haze provisions provided in NDAC section 33-15-25.¹

We also proposed to approve a portion of North Dakota’s August 3, 2020, SIP revision that addresses NDAC section 33.1-15-25 of the Air Pollution Control Rules for regional haze.² Specifically, we proposed to approve the following revisions to NDAC: section 33.1-15-25-01 which updates the incorporation by reference date for regional haze definitions; section 33.1-15-25-03 which adds emission reduction requirements to make reasonable progress for the second and subsequent

¹ On August 6, 2018, North Dakota submitted a SIP to EPA that recodified the Air Pollution Control Rules, including those that address regional haze, from NDAC section 33-15 to NDAC section 33.1-15. EPA approved the recodification on February 5, 2019 (84 FR 1610). The recodification made the regional haze section of NDAC to be changed from section 33-15-25 to section 33.1-15-25. The 2018 SIP reflected the deletions of section 33.1-15-25-02.1 and section 33.1-15.25-03 (formerly referred to as section 33-15-25-02.1 and section 33-15-25-03).

² EPA will act on the remaining portions of the ND August 3, 2020, SIP in a separate future rulemaking.

planning periods; and section 33.1-15-25-04 which revises the regional haze monitoring, recordkeeping, and reporting requirements to be applicable to sources under the second and subsequent planning periods.

We did not receive any comments on the proposed rule.

II. Final Action

In this action, EPA is finalizing approval on SIP amendments to North Dakota Air Pollution Control Rules, shown in Table 1, submitted by the State of North Dakota on November 11, 2016, and supplemented March 15, 2021, and August 3, 2020.

Table 1 - List of North Dakota Amendments that EPA is Approving

Amended Sections in the November 11, 2016 Submittal, Supplemented March 15, 2021
NDAC section 33-15-25-02.1, ³ NDAC section 33-15-25-03 ⁴
Amended Sections in the August 3, 2020 Submittal
NDAC section 33.1-15-25-01, NDAC section 33.1-15-25-03, NDAC section 33.1-15-25-04

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of NDAC as described in section II of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the

³ Since North Dakota's NDAC recodification in 2018, section 33-15-25-02.1 is referred to as section 33.1-15-25-02.1.

⁴ Since North Dakota's NDAC recodification in 2018, section 33-15-25-03 is referred to as section 33.1-15-25-03.

CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

⁵ 62 FR 27968 (May 22, 1997).

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 2, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

2. In §52.1820, the table in paragraph (c) is amended by revising the entries “33.1-15-25-01”, “33.1-15-25-02”, “33.1-15-25-03”, and “33.1-15-25-04” to read as follows:

§52.1820 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
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33.1-15-25. Regional Haze Requirements					

33.1-15-25-01	Definitions	7/1/2020	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	
33.1-15-25-02	Best available retrofit technology	7/1/2016	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	
33.1-15-25-03	Emission reduction measures required to make reasonable progress toward the national visibility goal	7/1/2020	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	
33.1-15-25-04	Monitoring, recordkeeping, and reporting	7/1/2020	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	

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